

<b>TO:</b> <b>Commissioner of Patents</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b> <b>or</b> <b>Commissioner of Trademarks</b> <b>P.O. Box 1451</b> <b>Alexandria, VA 22313-1451</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Colorado on the following **Patents**

DOCKET NO. <b>08-cv-02241-MSK-BNB</b>	DATE FILED <b>10/15/2008</b>	U.S. DISTRICT COURT <b>FOR THE DISTRICT OF COLORADO</b>
PLAINTIFF <b>BRASS SMITH, LLC</b>		DEFENDANT <b>HUBERT CO.</b>
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <b>6,588,863</b>		<b>Please see copy of Complaint attached hereto</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK	
1			
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4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK <b>GREGORY C. LANGHAM</b>	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

BRASS SMITH, LLC, a Colorado Limited Liability Company,

Plaintiff,

v.

HUBERT CO., a Delaware Corporation,

Defendant.

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**COMPLAINT AND JURY DEMAND**

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Plaintiff Brass Smith, LLC ("Brass Smith"), through its attorneys, files the following Complaint against Hubert Co. ("Hubert"), alleging as follows:

**JURISDICTION AND VENUE**

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et. seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).

**PARTIES**

2. Plaintiff Brass Smith is and was at all times relevant herein a Colorado limited liability company with its principal place of business at 3880 Holly Street, Denver, Colorado, 80207.

3. Defendant Hubert is and was at all time relevant herein a Delaware corporation with its principal place of business at 9555 Dry Fork Road, Harrison, Ohio, 45030.

4. On information and belief, Hubert is engaged the regular, continuous and systematic transaction of business in this district, *inter alia*, the distribution, sale and/or offer for sale of sneeze guards and other hospitality equipment to Colorado residents.

#### **THE PATENT**

5. On July 8, 2003, United States Patent No. 6,588,863, titled "Sneeze Guards and Methods for Their Construction and Use," was duly and legally issued to Steven Yatchak and Chuck DeWitt (the "'863 patent"). A true and correct copy of the '863 patent is attached as Exhibit A to this Complaint.

6. By assignment, Brass Smith now owns all right, title and interest in and to the '863 patent, including but not limited to the right to enforce the patent and collect damages for past and future infringements.

#### **COUNT ONE** **(Infringement of U.S. Patent No. 6,588,863)**

7. Brass Smith incorporates herein by reference each and every allegation in the preceding paragraphs.

8. On information and belief, Hubert is making, using, selling, and/or offering to sell products, including but not limited to the Hubert Sneeze-guard depicted in attached Exhibit B, that infringe one or more claims of the '863 patent in the United States.

9. On information and belief, Hubert is inducing and/or contributing to direct infringement of the '863 patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '863 patent.

10. Hubert's actions in infringing the '863 patent have been, and still are, willful, deliberate and/or in conscious disregard of the rights of Brass Smith and/or its predecessor-in-interest, making this an exceptional case within the meaning of 35 U.S.C. § 285.

11. The infringement of the '863 patent by Hubert will continue unless enjoined by this Court.

12. The infringing activities by Hubert have caused and will continue to cause irreparable injury to Brass Smith as to which there exists no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Brass Smith requests that judgment be entered in its favor and against Hubert as follows:

- A. Declaring that Hubert has infringed United States Patent No. 6,588,863;
- B. Issuing temporary, preliminary, and permanent injunctions enjoining Hubert, its officers, agents, subsidiaries and employees, and those in privity or in active concert with it, from further activities that constitute infringement of United States Patent No. 6,588,863 both within the State of Colorado and across the United States;
- C. Ordering that an accounting be had for the profits, reasonable royalties and/or other damages arising out of Hubert's infringement of United States Patent No. 6,588,863, and that the damages be trebled and awarded to Brass Smith, together with costs and prejudgment and post-judgment interest;
- D. Entering judgment that this case is an "exceptional case" within the meaning of 35 U.S.C. § 285 and award reasonable attorney's fees to Brass Smith; and

E. Awarding Brass Smith such other costs and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Brass Smith demands a trial by jury on all issues so triable.

DATED: October 15, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

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